

REMARKS

Applicant thanks the Examiner for withdrawing the previously pending rejection.

Claim Rejections – 35 USC §103

With regards to Claim 1, the Official action at page 3 states:

Harris teaches the use of a high density polyethylene composition (column 10 line 14-16) comprising a blend of high molecular weight high density polyethylene and medium molecular weight high density polyethylene (column 7, line 16-24) in the making of a bag (column 4, lines 56-60) for the purpose of making a bag that is suitable for heavy duty applications (column 4, lines 56-60).

As an initial matter, it should be noted that *Harris* is drawn to high density polyethylene melt blends for improved stress crack resistance in pipes. *Harris* does not disclose composition or processes for making bags. The reference to making a bag at column 4 goes to the quality of the resins i.e. “film grade”. *Harris* simply does not contemplate making plastic bags as suggested in the Office Action.

The presently pending claim 1 requires 40-48 wt % high density high molecular weight polyethylene, 12-20 wt % high density medium molecular weight polyethylene, and 20-30 wt. % linear low density polyethylene. This combination is not taught in the references.

At the beginning of the first full paragraph of page 3, the Office Action states:

Williams teaches a bag (column 3, lines 30-32) comprising 52-68 wt % high density polyethylene and 5-30 Wt % linear low density polyethylene (column 6, lines 12-20)

The *Williams* reference discloses 65-90 wt % high density polyethylene and 5-30 wt % linear low density polyethylene. The *William* reference fails to disclose the claimed weight percentage

of high density polyethylene. The Office Action does not suggest that the reference discloses the claimed percentage.

The Official Action appears to misconstrue the contents of USPN 6,822,051 to *Harris* in stating:

Harris teaches the use of a high density polyethylene composition (column 10, lines 14-16) comprising a blend of high molecular weight high density polyethylene and medium molecular weight high density polyethylene (column 7, lines 16-24) in the making of a bag that is suitable for heavy duty applications (column 4, lines 56-60).

Harris does teach a high density polyethylene composition, and is the only reference to make mention of a high density medium molecular weight polyethylene. *Harris* however, is drawn to the making of pipes, not bags. The reference to bags in column 4 goes to the grade of the polyethylene. The reference to plastic bags speaks to the grade of the film—not the medium molecular weight high density polyethylene/high molecular weight high density polyethylene combination. Furthermore, Applicant can see no motivation for looking to a reference for pipes with improved stress crack resistance in order to locate a composition suitable for plastic bags, where cracks are generally not an issue.

None of the references disclose the claimed percentages of high density high molecular weight polyethylene, namely, about 40-48 wt. % high density, high molecular weight polyethylene, nor the claimed percentages of high density medium molecular weight polyethylene. At page 3, the Office Action asserts 52-68 Wt. % of high density high molecular weight polyethylene is disclosed in *Williams*. *Williams* discloses 65-90 Wt. %.

Harris is provided for the proposition that it discloses 12-20 wt. % high density,

medium molecular weight polyethylene. It does not disclose this range, rather it provides a ratio, which is inverse of the claimed ratio (35 high density high molecular weight polyethylene:65 high density medium molecular weight polyethylene). The Office Action suggests that *Harris* teaches the selection of the amounts of high molecular weight high density polyethylene depending on the desired application of the end product. *Harris* specifically refers to compositions for “chemical waste storage applications including sanitary sewer piping”. *Harris* does not provide instruction for making bags, nor would a person have looked to *Harris* “Improved Stress Crack Resistance In Pipe” for instruction on forming melt blends for plastic bags.

Additionally, none of the references disclose the 10-20% recycled material, its properties, or its composition. The argument that because using recycled material is known routine optimization would lead to the claimed composition is impermissible hindsight reasoning. The Examiner must be aware of “the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See *Graham*, 383 U. S., at 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight”). 127 S. Ct. 1727 (2007),

In summary, the references, taken individually, and together simply fail to disclose the limitations that appear in the independent claims.

All of the Claims discussed here depend from Claim 1 or Claim 23, directly or indirectly. As Claims 1 and 23 should be allowable, as discussed *supra*, all claims should

likewise be allowable.


Based upon the above arguments, Applicant urges that the application is now in condition for allowance. The ONE MONTH EXTENSION fee is enclosed herewith.

Respectfully submitted,

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